

## **APPENDIX 1: RELEVANT LAWS, EXECUTIVE ORDERS, AND AGENCIES WITH JURISDICTIONAL AUTHORITY IN THE WESTERN PACIFIC REGION**

### **Magnuson–Stevens Fishery Conservation and Management Act**

The Magnuson–Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA) is the primary law governing fisheries resources and fishing activities in federal waters. Originally enacted as the Fishery Conservation and Management Act in 1976, it has been amended frequently since 1976; most recently in 1996, by the Sustainable Fisheries Act. The primary goals at the time of enactment of the MSA were the conservation and management of U.S. fishery resources, the development of United States domestic fisheries, and the phasing out of foreign fishing activities within the U.S. EEZ.

### **National Environmental Policy Act**

The National Environmental Policy Act (NEPA) of 1969 is the foundation of modern American environmental protection in the United States and its commonwealths, territories, and possessions. NEPA requires that federal agency decision makers, in carrying out their duties, use all practicable means to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans. NEPA provides a mandate and a framework for federal agencies to consider all reasonably foreseeable environmental effects of their proposed actions and to involve and inform the public in the decision-making process. NEPA compliance for fisheries management actions is further guided by regulations issued by the Council on Environmental Quality and those issued by the Department of Commerce's National Oceanic and Atmospheric Administration Administrative Order 216-6, Implementing the National Environmental Policy Act.

### **Endangered Species Act**

The Endangered Species Act (ESA) provides broad protection for species of fish, wildlife, and plants that are listed as threatened or endangered in the United States or elsewhere. Provisions are made for listing species, as well as for recovery plans and the designation of critical habitat for listed species. The ESA outlines procedures for federal agencies to follow when taking actions that may jeopardize listed species, and contains exceptions and exemptions. Criminal and civil penalties are provided for violations of the ESA.

### **Marine Mammal Protection Act**

The Marine Mammal Protection Act (MMPA) prohibits, with certain exceptions, the take of marine mammals in U.S. and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States. The MMPA gives the Secretary authority and duties for all cetaceans (whales, dolphins, and porpoises) and pinnipeds (seals and sea lions, except walruses). The MMPA requires the NMFS to prepare and periodically review

stock assessments of marine mammal stocks.

### **Fish and Wildlife Coordination Act**

The Fish and Wildlife Coordination Act (FWCA) authorizes collection of fisheries data and coordination with other agencies for environmental decisions affecting living marine resources. Both formal and informal consultations, cooperative research, and data gathering programs are routinely pursued.

### **Coastal Zone Management Act**

The Coastal Zone Management Act (CZMA) is designed to encourage and assist states in developing coastal management programs, to coordinate state activities, and to safeguard regional and national interests in the coastal zone. Section 307(c) of the CZMA requires that any federal activity affecting the land or water uses or natural resources of a state's coastal zone be consistent to the maximum extent possible with the enforceable policies of the affected state's approved coastal management program.

### **Administrative Procedure Act**

The Administrative Procedure Act (APA) requires federal agencies to give the public prior notice of rule making and an opportunity to comment on proposed rules. General notice of proposed rule making must be published in the *Federal Register*, unless persons subject to the rule have actual notice of the rule. Proposed rules published in the *Federal Register* must include reference to the legal authority under which the rule is proposed and explain the nature of the proposal including what action is proposed, why, what are its intended effect, and any relevant regulatory history that provides the public with a well-informed basis for understanding and commenting on the proposal.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires federal agencies to assess the impacts of their proposed regulations on small entities and to seek ways to minimize economic effects on small entities that would be disproportionately or unnecessarily adversely affected. The most recent amendments to the RFA were enacted on March 29, 1996, with the Contract with America Advancement Act of 1996 (Public Law 104-121). Title II of that law, the Small Business Regulatory Enforcement Fairness Act (SBREFA), amended the RFA to require federal agencies to determine whether a proposed regulatory action would have a significant economic impact on a substantial number of small entities. For a federal agency, the most significant effect of SBREFA is that it made compliance with the RFA judicially reviewable.

### **Freedom of Information Act**

The original Freedom of Information Act (FOIA) allowed the public to obtain government information, provided that the information is not protected by one of the nine specific FOIA exemptions, and required that an agency respond to a FOIA request within specified time limits.

Exempted information includes the following: classified secret matter of national defense or foreign policy, internal personnel rules and practices, information specifically exempted by other statutes, trade secrets and commercial and financial information, privileged interagency or intraagency memoranda or letters, personal information affecting an individual's privacy, and investigatory records for law enforcement purposes.

In 1996, the Electronic FOIA (E-FOIA) amendments changed FOIA by (among other things) extending the time limit that agencies had to respond to FOIA requests and requiring agencies to make reports available to the public by computer telecommunications or other electronic means, including listing their major information systems and a guide for obtaining information and establishing an electronic reading room that includes agency policies, staff manuals, and an index of records released under FOIA requests. NMFS compliance with FOIA is also guided by NOAA Administrative Order 205-14.

### **National Marine Sanctuaries Act**

Under the National Marine Sanctuaries Act (NMSA), the Secretary is authorized to designate discrete areas of the marine environment as National Marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use require comprehensive planning and management. The National Marine Sanctuary Program is administered by the Sanctuaries and Reserves Division of the National Oceanic and Atmospheric Administration (NOAA).

The mission of the National Marine Sanctuary Program is to identify, designate, and manage areas of the marine environment of special national significance because of their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities. The goals of the program are to provide enhanced resource protection through conservation and management of the sanctuaries that complements existing regulatory authorities; to support, promote, and coordinate scientific research on, and public awareness of, the site-specific marine resources of the sanctuaries; to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and to facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the national marine sanctuaries.

### **National Wildlife Refuge System Administration Act of 1966**

The National Wildlife Refuge System Administration Act (NWRSA) of 1966 provides for the administration and management of the national wildlife refuge system, including wildlife refuges, areas for the protection and conservation of fish and wildlife threatened with extinction, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas.

### **Executive Order 12866: Regulatory Planning and Review**

Executive Order 12866 was signed by the president on September 30, 1993, published October 4, 1993 (58 FR 51735), and replaced E.O. 12291 and E.O. 12498. Its purpose, among other things, is to enhance planning and coordination with respect to new and existing regulations, and to make the regulatory process more accessible and open to the public. In addition, E.O. 12866

requires agencies to take a deliberative, analytical approach to rule making, including assessment of costs and benefits of the intended regulations. For fisheries management purposes, it requires NMFS to prepare (a) a regulatory impact review for regulatory actions and (b) a unified regulatory agenda twice a year that inform the public of the agency's expected regulatory actions.

### **Executive Order 12898: Environmental Justice**

Executive Order 12898, issued in 1994, requires that federal agencies incorporate environmental justice into their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

### **Executive Order 13158: Marine Protected Areas**

On May 26, 2000, this executive order, signed by then President Clinton and published on May 31, 2000 (65 FR 34909), directs the Department of Commerce and the Department of the Interior to jointly develop a national system of marine protected areas (MPAs). The purpose of the system is to strengthen the management, protection, and conservation of existing protected areas and establish new or expanded MPAs. The MPA system is to be scientifically based, representing diverse U.S. marine ecosystems and the nation's natural and cultural resources. Establishing such a system is intended to reduce the possibility that MPAs are harmed by federally approved or funded activities.

### **Executive Orders 13178 and 13196: Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve**

On December 4, 2000, then President Clinton issued E.O. 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The executive order was revised and finalized by Executive Order 13196, issued January 18, 2001. The principal purpose of the Coral Reef Ecosystem Reserve is the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands in their natural character.

The seaward boundary of the Coral Reef Ecosystem Reserve is 50 nautical miles from the approximate center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. The inland boundary of the Reserve around each of these land areas is the seaward boundary of Hawaii State waters and submerged lands, and the seaward boundary of the Midway Atoll National Wildlife Refuge.

### **Marine Jurisdictions and Boundaries Issues**

This section briefly discusses the complex issues surrounding marine boundary jurisdictions in the Hawaiian Archipelago. Overlaps in boundary jurisdictions and the varying regulatory authorities can create challenges in the management of fisheries. Additional information on the

jurisdictions within the marine environment may be found in Appendix G of the Final Environmental Impact Statement—Bottomfish and Seamount Groundfish Fishery of the Western Pacific Region, dated May 2005.

### ***State of Hawaii***

The State of Hawaii consists of all islands, together with their appurtenant reefs and territorial waters, which were included in the Territory of Hawaii under the Organic Act of 1900. Under the Admissions Act of 1959, Congress granted to Hawaii the status of statehood and all amenities of a state, which included the reversion of title and ownership of the lands beneath the navigable waters from the mean high-tide line seaward, out to a distance of 3 miles, as stated by the Submerged Lands Act of 1953. Congress excluded Palmyra Atoll, Kingman Reef and Johnston Atoll, including Sand Island, from the definition of the State of Hawaii in 1959. The federal government also retained 1,765 acres of emergent land in the NWHI, which had been set aside by E.O. 1019 in 1909, establishing the Hawaiian Islands Reservation (HIR). The HIR was later renamed the Hawaiian Islands National Wildlife Refuge (HINWR). The State of Hawaii claims jurisdiction beyond its territorial seas of 0 to 3 nautical miles by claiming archipelagic status over channel waters between the Main Hawaiian Islands. The federal government does not recognize the State's claim of archipelagic jurisdiction, but interprets the State's seaward authority to stop at 3 nautical miles from the baseline (Feder 1997).

### ***Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and Proposed Northwestern Hawaiian Islands National Marine Sanctuary***

In May 2000, then President Clinton issued a Memorandum to implement a U.S. Coral Reef Task Force recommendation and comprehensively protect the coral reef ecosystem of the NWHI. The memorandum directed the Secretaries of Interior and Commerce, in cooperation with the State of Hawaii, and in consultation with the Council, to develop recommendations for a new, coordinated management regime to increase protection for the NWHI coral reef ecosystem and provide for sustainable use. After considering their recommendations and comments received during the public visioning process on this initiative, then President Clinton issued E.O. 13178 on December 4, 2000, establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the NMSA. The executive order was revised and finalized by E.O. 13196, issued January 18, 2001. Pursuant to E.O. 13178 and the NMSA, NOAA is initiating the process to designate the reserve as a national marine sanctuary (66 FR 5509, January 19, 2001). Given the ongoing nature of the sanctuary designation process, this Draft SEIS does not address the outcome of that process or possible impacts of the proposed sanctuary on all components of the human environment.

### ***U.S. Fish and Wildlife Refuges***

The U.S. Fish and Wildlife Service (USFWS) has been given authority to manage a number of National Wildlife Refuges (NWR) within the Hawaii Archipelago. The USFWS asserts the authority to manage marine resources and all activities, including fishing activities within refuge boundaries pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and other

authorities.

Executive Order 1019 reserved and set apart the islands reefs and atolls from Nihoa to Kure Atoll, excluding Midway, “as a preserve and breeding ground for native birds” to be administered by the Department of Agriculture. The HIR was transferred to the Department of the Interior in 1939 and in 1940 renamed the HINWR through Presidential Proclamation 2466, with control transferred to the USFWS.

Within the HINWR, the USFWS asserts management authority over all marine resources to a depth of 10 fathoms with the exception of Necker Island, where it asserts a 20-fathom boundary. The USFWS acknowledges that all HINWR islands are part of the State of Hawaii, but asserts federal administrative authority over the NWR.

Midway Atoll NWR, established under E.O. 13022 in 1996, is located in the NWHI. The USFWS defines the refuge boundary as approximately 12 miles seaward from the shoreline, although the exact boundary is disputed. The U.S. Navy established a Naval Air Facility at Midway in 1941 and the USFWS established an overlay refuge in 1988 to manage fish and wildlife on the atoll. Through the Base Alignment Closure Act of 1990, as amended, the Naval Air Facility closed in 1993 and the property was transferred to the USFWS in 1996.

## **References**

Feder, J. J. 1997. Memorandum from Judson Feder, NOAA General Counsel, Southwest Region to Kitty Simonds, Executive Director of the Western Pacific Regional Fishery Management Council. October 17, 1997.